

# Re Young

IN THE MATTER OF:

**THE DEALER MEMBER RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

AND

**THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA**

AND

**KAREN MARIE YOUNG**

2010 IIROC 34

Investment Industry Regulatory Organization of Canada  
Hearing Panel (Pacific District Council)

Heard: June 2, 2010 in Vancouver, BC

Decision: August 6, 2010

(17 paras.)

## Hearing Panel:

Stephen D. Gill (Chair), Don Teatro, L. Karen Henderson

## Appearance:

Wietzke Gerber, for the Investment Industry Regulatory Organization of Canada

Dana H. Prince, for the Respondents

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## REASONS FOR DECISION

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¶ 1 Pursuant to the IIROC/IDA By-laws and Rules, this hearing was called to consider a Settlement Agreement, made on or about May 28, 2010 between IIROC Staff and the Respondent.

¶ 2 The Panel heard submissions by counsel for the parties in support of the Settlement Agreement and reviewed the authorities. After consideration, for the reasons that follow, the Hearing Panel accepted the Settlement Agreement.

¶ 3 The Settlement Agreement sets out the background and facts of this case, the contraventions admitted by the Respondent, and the agreed terms of settlement. It is appropriate to quote the **Settlement Agreement** in its entirety:

### I. Introduction

1. IIROC Enforcement Staff and Karen Marie Young (Young) consent and agree to the settlement of this matter by way of this settlement agreement (the Settlement Agreement).

2. The Enforcement Department of IIROC conducted an investigation (the Investigation) into the conduct of Young.
3. The Investigation was commenced by Enforcement Department Staff prior to May 30, 2008. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the IDA and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
4. The Investigation discloses matters for which Young may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the Hearing Panel).

## **II. Joint Settlement Recommendation**

5. Staff and Young jointly recommend that the Hearing Panel accept the Settlement Agreement.
6. Young admits that between June 2004 and June 2006 (Relevant Period), while employed as a Registered Representative (RR) by Golden Capital Securities Ltd. (Golden), a Member firm, Young acted contrary to Dealer Member Rule (Rule) 1300.1(a) by failing to take sufficient steps to learn the essential facts relative to her client.
7. Staff and Young agree to the following terms of settlement:
  - a) A four-month ban, not running concurrent with any other ban, from receiving registration approval in any capacity with any Dealer Member of IIROC; and
  - b) a fine in the sum of \$15,000.
8. Young agrees to pay costs to IIROC in the sum of \$2,500.

## **III. Statement of Facts**

9. Staff and Young agree, solely for the purposes of this Settlement Agreement, with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

### **A. Respondent**

10. Young was employed as an RR by Golden, an IDA/IIROC Member.
11. Young was employed by Member firms in a registered capacity from November 2000 until May 2008, when she voluntarily resigned.

### **B: PARTICULARS OF CONTRAVENTION**

#### **The Client Accounts**

12. NSH opened two corporate cash accounts at Golden with Young, which were approved on June 28, 2004 (NSH Account A) and January 14, 2005 (NSH Account B).
13. During the Relevant Period, the NSH accounts purchased securities worth US\$9,214,187, sold securities worth US\$40,874,911, and generated commissions of approximately \$250,000 for Young.

#### **Rule 1300 (1) (a)**

##### **Know Your Client**

14. The New Client Application Form (NCAF) and supporting documentation for NSH Account A contained the following information:
  - NSH was incorporated in the Turks and Caicos Islands (TCI)
  - NSH was a new client that Young had not personally met

- No one other than the named account-holder had a financial interest in the account
  - NSH described its business as investing
  - NSH indicated that one of the owners was an investment advisor
  - NSH (TCI) filed a letter that disclosed the identity of the two individual half-owners of NSH (BVI) and not TCI
  - Citizenship declaration that indicated that both the beneficial owners of the account were Canadian citizens
  - A W8-BEN tax-withholding form that directed Golden Capital to withhold US taxes on the basis that NSH was the beneficial owner of all the income from the account.
15. Young did not obtain any further documentation that provided additional information about NSH's investing business, nor was Young requested to do so by Golden.
16. NSH did not provide any responses on the NCAF for NSH Account A to questions whether:
- it is a trust, corporation, or partnership
  - signatories have other accounts
  - NSH has other related accounts at Golden or with other Member firms.
17. NCAF and supporting documentation for NSH Account B contained the following information:
- The same address and bank account information as for NSH Account A but the NCAF stated that NSH was incorporated in the British Virgin Islands (BVI)
  - W8-BEN tax-withholding form declaring that NSH was the beneficial owner of all income derived from the account
  - TCI business license that indicated that NSH had been granted a license under the brokerage class of business
  - TCI certificate of good standing.
18. NSH did not provide any documentation about its incorporation in the BVI or that NSH was in good standing in the BVI. NSH did not provide any responses on the NCAF for NSH Account B to questions concerning:
- who has trading authority or a financial interest in the account
  - who guarantees the account
  - whether NSH is a trust, corporation, or partnership
  - whether it is a discretionary or managed account
  - whether signatories have other accounts
  - whether the client has other related accounts at Golden or with other brokers.
19. Young did not obtain any further documentation to verify that NSH was incorporated in the BVI or that NSH (TCI) and NSH (BVI) were the same corporate entity, nor was she requested to do so by Golden.
20. Young reviewed NSH's website and concluded that NSH was a securities dealer who would be trading on behalf of undisclosed third parties. Young opened the NSH accounts without verifying whether:
- NSH was registered to act as a securities dealer in TCI or BVI

- TCI and BVI are members of the Financial Action Task Force (FATF)
  - TCI and BVI had implemented the FATF's anti-money laundering recommendations
  - NSH was subject to a regulatory regime with similar know-your-client and anti-money laundering requirements to those in Canada
  - NSH had policies and procedures with respect to receiving physical share certificates from its clients.
21. NSH was not a registered securities dealer and Young failed to use due diligence to learn and remain informed of the essential facts relative to NSH.
  22. Notwithstanding Young's failure to meet the standard required of her in her role as a gatekeeper, there were the following mitigating factors:
    - (a) Young's failure was not intentional. Golden did not ask Young to obtain any further documentation or information about NSH or about NSH Account A or NSH Account B. Golden approved the opening of the account based on the account documentation as detailed above. Young was never asked to update the account information about NSH or for the NSH Account A or NSH Account B.
    - (b) From 2006 until Young's voluntary resignation, Young, at the direction of the IIROC/IDA, was placed under close supervision pending the conclusion of the IDA's investigation of this matter. According to Golden, Young satisfactorily performed throughout the period of close supervision.

## **V. Terms of Settlement**

23. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive, and Rule 15 of the Dealer Member Rules of Practice and Procedure.
24. The Settlement Agreement is subject to acceptance by the Hearing Panel.
25. The Settlement Agreement shall become effective and binding upon Young and Staff as of the date of its acceptance by the Hearing Panel.
26. The Settlement Agreement will be presented to the Hearing Panel at a hearing (the Settlement Hearing) for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
27. If the Hearing Panel accepts the Settlement Agreement, Young waives her right under IIROC rules and any applicable legislation to a disciplinary hearing, review, or appeal.
28. If the Hearing Panel rejects the Settlement Agreement, Staff and Young may enter into another settlement agreement or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
29. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
30. Staff and Young agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
31. Unless otherwise stated, any monetary penalties and costs imposed upon Young are payable immediately upon the effective date of the Settlement Agreement.
32. Unless otherwise stated, any suspensions, bars, expulsions, restrictions, or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

¶ 4 The Panel acknowledged its role under Rule 20.36 in considering the Settlement Agreement, namely recognizing the importance of the settlement process, and the importance of a negotiated settlement. As was said in *Re Milewski* [1999] I.D.A.C.D. No. 17:

“Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council in making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.” (page 11)

¶ 5 In *Re Clark* [1999] I.D.A.C.D. No. 40 (December 14, 1999), the Panel in considering a settlement agreement stated:

“It was submitted by staff and accepted by the panel that its role under by-law 20.26 is not the same as its role under by-law 20.10 following a hearing. In considering a settlement under by-law 20.26 the panel should not simply substitute its discretion for that of staff when negotiating a settlement. **The panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement.** In our view, as a result, panels must also be careful in using previous settlements as precedent. The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a hearing where similar findings are made. (page 3) (*emph. added*)

¶ 6 Similarly, the Court of Appeal for Saskatchewan in *Rault v. Law Society of Saskatchewan* (2009) S.J. No. 436 (C.A.) (July 15, 2009) stated:

“[13] The Appellant contends that the principles applied in the public law field of criminal law, with respect to joint submissions on sentencing, should be applied in the matter of sentences imposed pursuant to statutory powers accorded to the Law Society. In Saskatchewan, the principle related to joint submissions for criminal law purposes is set out in *R. v. Webster*, wherein Cameron J.A. adopted the principles described in the Alberta Court of Appeal in *R. v. G.W.C.* In summary, those principles establish that there is an obligation on a trial judge to give serious consideration to a joint submission on sentencing agreed upon by counsel unless the sentence is unfit or unreasonable; or contrary to the public interest; and, it should not be departed from unless there are good or cogent reasons for doing so.

¶ 7 It must be remembered that the securities industry is a business of trust and confidence. Registered representatives must above all conduct themselves with trustworthiness and integrity, and act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole. In this case, the Respondent had been employed by member firms in a registered capacity from November 2000. She opened the accounts which are the subject of this hearing in June, 2004, and January, 2005. At that point in her career, it is our view that she ought to have recognized the serious “red flags” that the opening of the accounts, and the information about the accounts revealed to her. In our view the Respondent ought to have asked, or made diligent inquiries with respect to the matters set out in paragraph 20 of the Settlement Agreement.

¶ 8 However, it is important to note that as per paragraph 22 of the Settlement Agreement, the Respondent’s conduct was unintentional, and we were advised that she was a processor of orders, and did not give any advice

to these clients. However, it cannot be ignored that it was obvious that the Respondent knew little about the clients, but yet the trading was very significant, and the commissions earned were significant. This case also raises serious questions with respect to the supervisory conduct of the compliance department of the member firm.

¶ 9 With respect to the penalty, counsel reviewed with the panel the IIROC Dealer Member Disciplinary Sanction Guidelines General Principles with respect to determining an appropriate penalty, and the specific Guideline respecting the Failure to Know Your Client rules. The considerations in addition to the General Principles are as follows:

- i. Nature and extent of failure to know your clients;
- ii. Magnitude of loss directly attributable to the failure to know your clients;
- iii. The level of sophistication of the client;
- iv. Extent of due diligence conducted to determine essential facts of the client.

The minimum fine suggested is \$10,000.

¶ 10 It must be remembered that in this case the Respondent was required to work under close supervision from 2006 until she resigned in May, 2008; and according to the Settlement Agreement facts, performed satisfactorily throughout that period. Thus, the suspension and the fine of \$15,000 are in addition to the extended period of close supervision.

¶ 11 Counsel referred us to a number of authorities in relation to the settlement including *Re Collias*; *Re Kassman and Anderson*; *Re Faiello*; *Re Ng*; *Re Brunetta*; *Re Trudeau*; and *Re Scharfe*. In our view the sanctions that have been agreed to in this case reflect the range of penalties that have been imposed in a number of cases dealing with circumstances which in some respects are analogous to this case.

¶ 12 We are advised that a considerable amount of time was taken in negotiating the terms of the Settlement Agreement, and the Respondent was represented by experienced counsel. In our view there are some mitigating factors including the position held by the Respondent, and the fact that her conduct herein was not intentional; no client losses are alleged; and there was an extended period of close supervision.

¶ 13 In our view it is important for registered persons and member firms to appreciate that there may be significant penalties, including suspension and/or close supervision, and/or a fine, as a result of disciplinary action if due diligence is not exercised in respect of new client opening procedures. Protection of the investing public is a significant and important consideration.

¶ 14 It must also be borne in mind with respect to the penalties in this case that the Respondent did not have a previous disciplinary history; there is no allegation in this case of any breach of trading rules; and the Respondent cooperated in the investigation.

¶ 15 Having fully considered the facts and circumstances set forth in the Settlement Agreement, the authorities cited, and the submissions of counsel we find that the Settlement Agreement is within the reasonable range and is appropriate.

¶ 16 Accordingly, for these reasons, we have accepted the Settlement Agreement. We thank counsel for their able assistance.

¶ 17 These reasons may be signed in counterpart.

Dated this 6th day of August, 2010.

Stephen Gill

Don Teatro

Karen Henderson, Member

